

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Rulemaking to Amend Parts 1, 2, 21, 25) CC Docket No. 92-297
of the Commission's Rules to Redesignate)
the 27.5-29.5 GHz Frequency Bands, to)
Reallocate the 29.5-30.0 GHz Frequency)
Band, to Establish Rules and Policies for)
Local Multipoint Distribution Service)
and for Fixed Satellite Services)
)
Application for Review of the Wireless)
Telecommunications Bureau's)
September 25, 1997 Public Notice)

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**COMMENTS OF UNITED STATES TELEPHONE ASSOCIATION,
AMERITECH CORPORATION, MICHIGAN BELL TELEPHONE COMPANY, THE
OHIO BELL TELEPHONE COMPANY, BELL ATLANTIC TELEPHONE
COMPANIES, BELL ATLANTIC COMMUNICATIONS, INC., BELL SOUTH
CORPORATION, BELL SOUTH TELECOMMUNICATIONS, INC., BELL SOUTH
INTERACTIVE MEDIA SERVICES, INC., AND GTE SERVICE CORPORATION**

United States Telephone Association, Ameritech Corporation, Michigan Bell Telephone Company, The Ohio Bell Telephone Company, Bell Atlantic Telephone Companies, Bell Atlantic Communications, Inc., BellSouth Corporation, BellSouth Telecommunications, Inc., BellSouth Interactive Media Services, Inc., and GTE Service Corporation (collectively, USTA) respectfully submit comments in support of the Joint Application for Review filed by WebCel Communications, Inc., LBC Communications, Inc. and Zip Communications, Inc. (collectively, the Joint Petitioners) on October 23, 1997. In view of the "climate of uncertainty" raised by the September 12, 1997 release of the Commission's *Second Order on*

*Reconsideration*¹ regarding the auction of spectrum for local multipoint distribution service (LMDS) licenses -- and the unresolved litigation pending before the United States Court of Appeals for the D.C. Circuit -- USTA agrees with the Joint Petitioners that the auction should be deferred in order to satisfy Congress's mandate that potential bidders have sufficient opportunity to "gather the information that is necessary for a robust auction."² USTA urges the Commission to defer by 120 days the starting date of the LMDS auction and all of the relevant pre-auction deadlines.

USTA shares Congress's and the Joint Petitioners' concern that potential bidders be afforded an opportunity to assess all material facts and circumstances prior to commencement of the auction for LMDS spectrum. One material -- indeed, critical -- fact is whether local exchange carriers (LECs) will be eligible to participate at auction for LMDS licenses within their local exchange areas. As the Commission is aware, this precise issue is pending before the D.C. Circuit and oral argument is scheduled for January 16, 1998, more than one month after the LMDS auction is scheduled to commence. The Court denied USTA's motion to further expedite its consideration of the case, and USTA has been advised by the calendaring clerk that January 16 is the first available date on the Court's schedule to hear oral argument.³ Deferral of the

¹ *Second Order on Reconsideration*, Rulemaking to Amend Parts 1, 2, 21, 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Bands, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, CC Docket No. 92-297, 62 Fed. Reg. 48786 (rel. Sept. 12, 1997) (*Second Order on Reconsideration*).

² H.R. Rep. No. 105-149, 105th Cong., 2d Sess. at 567 (1997).

³ We note that the Commission supported our request that the D.C. Circuit expedite its consideration of the case to permit a decision on the merits before the auction.

auction will provide the Court an opportunity to resolve the issue of LEC eligibility prior to the commencement of the auction.

As the Commission repeatedly has recognized, the purpose of awarding licenses through a competitive bidding process is to place licenses in the hands of those who value them the most, thereby maximizing the efficient development and use of the spectrum. An auction of LMDS licenses can achieve this purpose only when the eligibility issues raised by USTA have been resolved and the legal cloud overhanging the auction has been lifted. Otherwise, in view of the significant transaction costs involved in attracting the capital needed to participate at auction, potential bidders' financial interest in the auction inevitably will be affected by the possibility that the results of the auction may soon thereafter be invalidated by the pending court challenge. Potential bidders also may be concerned that their bidding and market strategies will be revealed prematurely by participating in an auction that turns out to have been a "dry run."

The auction process will operate efficiently and yield the best results if the Commission affords the D.C. Circuit an opportunity first to rule on the pending petitions. In light of the Court's agreement to consider the matter on an expedited basis, that should not require a substantial delay in the present schedule. Joint Petitioners requested an extension of 60 days, and Counsel for Joint Petitioners WebCel Communications and LBC Communications have indicated that they would not oppose an additional 60-day enlargement. A 120-day deferral of the auction would provide the Court an opportunity to consider fully the issues presented for review⁴ and thereby afford much needed certainty to potential bidders, as well as their financial backers, and allow the auction to proceed without disruption.

⁴ We note that the D.C. Circuit rendered a decision on the recent FCC payphone case less than two months after they heard oral argument.

For the reasons set forth above, USTA supports the Joint Petitioners' Application for Review and requests that the Commission defer the LMDS auction for 120 days to permit the D.C. Circuit an opportunity to reach a decision in the case.

Respectfully submitted,

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